

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Name McIntosh, Ronald J.
 (Last) (First) (Initial)

Prisoner Number 12053-085

Mailing Address P.O. Box 8000; Marianna, FL 32447-8000

E-filing

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

RONALD J. McINTOSH,
 (Enter the full name of plaintiff in this action.)

vs.

ERIC H. HOLDER, JR.,
ATTORNEY GENERAL, U.S. of A.,

ATTORNEY GENERAL

STATE OF CALIFORNIA,
 (Enter the full name of respondent(s) or jailor in this action)

Case No. 09-0750
 (To be provided by the clerk of court)

**PETITION FOR A WRIT
 OF HABEAS CORPUS**

Read Comments Carefully Before Filling In

When and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

1 Who to Name as Respondent

2 You must name the person in whose actual custody you are. This usually means the Warden or
 3 jailor. Do not name the State of California, a city, a county or the superior court of the county in which
 4 you are imprisoned or by whom you were convicted and sentenced. These are not proper
 5 respondents.

6 If you are not presently in custody pursuant to the state judgment against which you seek relief
 7 but may be subject to such custody in the future (e.g., detainees), you must name the person in whose
 8 custody you are now and the Attorney General of the state in which the judgment you seek to attack
 9 was entered.

10 A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

11 1. What sentence are you challenging in this petition?

12 (a) Name and location of court that imposed sentence (for example; Alameda
 13 County Superior Court, Oakland):

14 San Mateo County Superior Court Redwood City, California

15 Court Location

16 (b) Case number, if known SC-23606A

17 (c) Date and terms of sentence Feb. 20, 1991
Life w/o possibility of parole

18 (d) Are you now in custody serving this term? (Custody means being in jail, on
 19 parole or probation, etc.) Yes x No

20 Where? Federal Bureau of Prisons

21 Name of Institution: WITSEC

HOLC Building, Room 524

22 Address: 320 First Street, NW

Washington, DC 20534

23 2. For what crime were you given this sentence? (If your petition challenges a sentence for
 24 more than one crime, list each crime separately using Penal Code numbers if known. If you are
 25 challenging more than one sentence, you should file a different petition for each sentence.)

26 Count 1) CPC § 187 with Spec. Circ. CPC § 190.2 - First Degree Murder

27 Count 2) CPC § 182 Conspiracy to Murder

3. Did you have any of the following?

Arraignment: Yes X No

Preliminary Hearing: Yes X No

Motion to Suppress: Yes X No

4. How did you plead?

Guilty Not Guilty X Nolo Contendere

Any other plea (specify) N/A

5. If you went to trial, what kind of trial did you have?

Jury X Judge alone Judge alone on a transcript

6. Did you testify at your trial? Yes X No

7. Did you have an attorney at the following proceedings:

(a) Arraignment Yes X No

(b) Preliminary hearing Yes X No

(c) Time of plea Yes X No

(d) Trial Yes X No

(e) Sentencing Yes X No

(f) Appeal Yes X No

(g) Other post-conviction proceeding Yes No X

8. Did you appeal your conviction? Yes X No

(a) If you did, to what court(s) did you appeal?

Court of Appeal Yes X No

Year: 1991 Result: Affirmed

Supreme Court of California Yes X No

Year: 1992 Result: Cert. Denied

Any other court Yes No X

Year: N/A Result: N/A

(b) If you appealed, were the grounds the same as those that you are raising in this

petition? Yes _____ No X

(c) Was there an opinion? Yes _____ No X

(d) Did you seek permission to file a late appeal under Rule 31(a)?

Yes _____ No X

If you did, give the name of the court and the result:

N/A

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes X No _____

[Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. §§ 2244(b).]

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court: San Mateo Superior Court

Type of Proceeding: Habeas Corpus

Grounds raised (Be brief but specific): Same as being raised herein.

- a. Government Suppressed Exculpatory Evidence
- b. Subornation of Perjury
- c. Witness Tampering
- d. Perjury, Vouching for Witnesses, & Known use of Perjury
- e. Prosecutor used Conflicting Theories
- f. Found Guilty by a Preponderance of the Evidence
- g. Hearsay Statements (Evidence)
- h. Juror Misconduct
- i. Insufficient Evidence to Connect to Conspiracy

- j. Ineffective Assistance of Defense Counsel
- k. Ineffective Assistance of Appellant Counsel
- l. Had Suppressed Evidence Been Available out-come would have been different (not guilty)
- m. Cumulative Error
- n. Newly Discovered Evidence Requires an Evidentary Hearing
- o. Actual Innovence
- p. Abuse of Discretion by Lower Courts

Result: Denied w/o hearing Date of Result: 07/27/2007

II. Name of Court: Calif. Appells Court, 1st Dist.

Type of Proceeding: Habeas Corpus

Grounds raised (Be brief but specific):

Same as stated above and being raised herein.

a. _____

Result: Denied w/o hearing Date of Result: 03/13/2008

III. Name of Court: Supreme Court of California

Type of Proceeding: Habeas Corpus

Grounds raised (Be brief but specific):

Same as stated above and being raised herein.

a. _____

Result: _____ Date of Result: _____

(b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

Yes _____ No X

Name and location of court: N/A

B. GROUNDS FOR RELIEF

State briefly every reason that you believe you are being confined unlawfully. Give facts to support each claim. For example, what legal right or privilege were you denied? What happened? Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: THE GOVERNMENT SUPPRESSED EXULPATORY EVIDENCE IN
6 VIOLATION OF BRADY AND ITS PROGENY

7 Supporting Facts: The government suppressed the fact that Younge
8 (hearsay witness) and Quartermain (the shooter) were long time
9 friends and done this same type of crime before, murders & extortions.
10 That they had a history of pointing the finger at someone else when
11 it was to their advantage. This suppression of evidence allowed
12 Younge to commit perjury, unchallenged. The only witness (evidence)
13 that placed the defendant in the alleged conspiracy. (See Memorandum
14 and Attachments C, E, J, O.).

17 Claim Two:
18 SUBORNATION OF PERJURY

19 Supporting Facts: Witness Chandler, testified five times that it was a
20 drug deal, when Ewing was shot and killed, not a conspiracy to kill
21 Ewing. But, at the defendant's trial she changed her testimony to:
22 She knew there was going to be a murder and she was paid to be there.
23 When interviewed by private investigator, she said: "She didn't know
24 anything until the detectives told her the facts of the case."
25 (See Memorandum and Attachment C.)

1
2 Claim Three: WITNESS TAMPERING

3
4 Supporting Facts: Green would have been a defense witness, but San
5 Mateo detectives threatened him, after interviewing him. Greene
6 would have established that prosecution witness, Younge, was lying,
7 about the defendant being at an alleged conspiracy meeting.
(See Memorandum and Attachment H.)

8
9
10
11 Claim Four: PERJURY, VOUCHING FOR STATE WITNESSES, AND THE
12 KNOWN USE OF PERJURY BY THE PROSECUTOR

13 Supporting Facts: Prosecution witness, Younge, committed perjury when
14 he testified that he had only known Quartermain (the shooter) since
15 1982. Concealing their long term criminal association. Younge also
16 perjured himself regarding money. FBI agent Langan vouched for
17 Younge's honesty, knowing Younge was lying. The prosecutor knew of
18 Younge's and Quartermain's long term association. The prosecutor
19 knew or should have known that Chandler was lying. (See Memorandum
20 and Attachments A, B, C, D, E, F, G, M, N, O, P.).

21 Claim Five: THE PROSECUTOR USED CONFLICTING THEORIES

22 Supporting Facts: At defendant's trial the prosecutor would have the
23 jury believe that everything Quartermain told Younge was the truth.
24 The jury never got to hear or see Quartermain, they only heard
25 alleged statements given by Quartermain to Younge. Then Younge
26 testified to the alleged hearsay statements, Younge is a perjurer.
27 But, at Quartermain's trial, the same prosecutor said that
28 Quartermain is a liar and lying all the time (See Memorandum and
Attachment I.).

1
2 Claim Six: THE COURT ERRED WHEN INSTRUCTING THE JURY NEED ONLY FIND
3 THE DEFENDANT GUILTY BY A PERPONDERANCE OF THE EVIDENCE, BIFURCATION
4 OF DEFENSE, CONFUSING & CONFLICTING, UNJOINED PERPETRATOR INSTRCTIONS
Supporting Facts:

5 The court instructed the jury that they only need find
6 find the defendant **guilty by a preponderance** of the evidence. Court
7 bifurcated the defense, by requiring the defense to prove that
8 prosecution witness, Younge, was a coconspirator, and allowed Younge's
9 uncorroborated hearsay testimony in. Court told the jury that all
10 coconspirators are guilty of **second** degree murder. Court told jury
need to determine if Younge coconspirator. Unjoined perpetrator
~~instruction removed the need to corroborate Younge's testimony.~~

11 Claim Seven: THE COURT ERRED IN THE ADMISSIBILITY OF HEARSAY
12 STATEMENTS

13 Supporting Facts: The court is required to determine before trial if
14 coconspirators out-of-court hearsay statements can be introduced as
15 evidence. But, in this case, the court allowed hearsay in, then
16 left it up to the jury to decide if the hearsay should be
17 corroborated. In fact only the uncorroborated testimony of Younge
18 placed the defendant into any alleged conspiracy. (See Memorandum).

19
20 Claim Eight: JUROR MISCONDUCT PREJUDICED THE JURY

21
22 Supporting Facts: The jury foreman did his own out-side investigations,
23 interviews, and then brought his findings back to the jurors. Then
24 if the juror did not agree with him he threatened each of the jurors
25 with personal bodily harm. (See Memorandum).
26
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Claim Nine: THERE IS INSUFFICIENT EVIDENCE TO CONNECT McINTOSH
TO ANY CONSPIRACY TO MURDER EWING

Supporting Facts: The uncorroborated hearsay testimony of prosecution
wintess Younge, is the only evidence that places the defendant in
any alledged conspiracy. (See Memoradum).

Claim Ten: INEFFEDCIVE ASSISTANCE OF DEFENSE COUNSEL

Supporting Facts: Defense counsel failed to investigate, or was
rendered ineffective by the government's suppression of excupatory
evidence.

Claim Eleven: INEFFECTIVE ASSISTANCE OF APPELLANT COUNSEL

Supporting Facts: Appellant counsel failed to taise the issue of
"guilty by a perponderance of the evidence". A sure winner!
(See Memoradun, also see Memoradum, section VI.a.)).

1
2 Claim Twelve: HAD THE SUPPRESSED EVIDENCE BEEN AVAILABLE TO THE
3 DEFENSE THERE IS A REASONABLE PROBABILITY THAT THE OUTCOME OF THE
4 TRIAL WOULD HAVE BEEN DIFFERENT

5 Supporting Facts: The newly discovered evidence establish that it was
6 Younge and Quartermain who planned to kill Ewing, not the defendant.
7 That the government suppressed evidence; witness tampering; witness
8 subornation of perjury. Without the subornation perjured statements
9 without the perjury, there was no crime, in which the defendant
10 participated. (See Memoradum).

11 Claim Thirteen: CUMULATIVE ERROR

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13 Supporting Facts: The number of errors in this case are numerous, in
14 the multiples of tens. The petitioner has shown over 22 errors, of
15 which any one of them should be cause for this conviction to be
16 reversed. But, when taken in their totality, reversal is
17 mandated. (See Memoradum).

18
19 Claim Fourteen: NEWLY DISCOVERED EVIDENCE REQUIRES AN EVIDENTARY
20 HEARING

21
22 Supporting Facts: Becasue there is question of material fact, which is
23 not in the record,an evidentiary hearing is required to determine if
24 the evidence, which was suppressed, and unknow until this time,
25 would the outcome of the trial have been different. (See Memoradum).

1
2 Claim Fifteen: ACTUAL INNOCENCE
3

4 Supporting Facts: To establish actual innocence in a conspiracy is
5 difficult. But, never the less, it is true. The prosecution
6 witness, Younge, took a few facts, and then fabricated a store,
7 placing the defendant in the witness's place in the conspiracy.
8 It was the witness, Younge, who wanted Ewing kill, not the defendant.
9 The defendant was totally anaware of any plans to kill anyone, let
10 alone Ewing. The newly discovered evidence establish this truth.
(See Memoradum).

11 Claim Sixteen: ABUSE OF DISCRETION BY THE LOWER COURTS
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13 Supporting Facts: Petitioner is not educated in the law, but it is his
14 understanding that the lower courts should have held an evidentary
15 hearing, which they failed to do. (See Memoradum).
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23 If any of these grounds was not previously presented to any other court, state briefly which
24 grounds were not presented and why:
25

26 N/A/
27
28

1 List, by name and citation only, any cases that you think are close factually to yours so that they
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning
3 of these cases:

4 Brady v Maryland, (1963) 373 U.S. 83

5 Kyles v Whitley (1995) 514 U.S. 419

6 and numerous others See Memorandum in Support.

7 Do you have an attorney for this petition? Yes _____ No x

8 If you do, give the name and address of your attorney:

9 N/A

10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12
13 Executed on

Feb 16, 2009

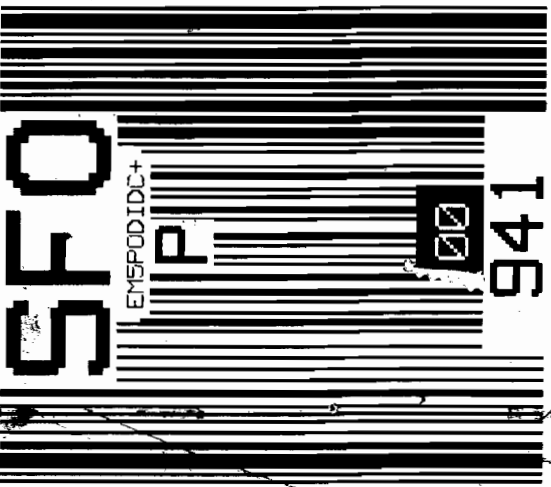
14 Date

R. + M. Intertal

15 Signature of Petitioner

16
17
18
19
20 (Rev. 6/02)

WGT: 007 TOTAL: 01061
AR: SFO AT 20:11 ORG: MOB: 01
LY: MOB AT 07:00 02/18/09



BOX

Use

From: Expéditeur

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12053-086

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MIAMI, FL
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CV 09

0750

(PR)

Destinataire:

CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT CALIFORNIA
450 GOLDEN GATE AVE
16TH FLOOR
SAN FRANCISCO, CA 94102



PLY:



Country of Destination: Pays de destination:

DUPLICATE

Court Name: U.S. District Court, NDCA
Division: 3
Receipt Number: 34611829054
Cashier ID: sprinka
Transaction Date: 02/19/2009
Payer Name: United States Treasury

WRIT OF HABEAS CORPUS
For: ronald mcintosh
Amount: \$5.00

CHECK
Check/Money Order Num: 222135029754
Amt Tendered: \$5.00

Total Due: \$5.00
Total Tendered: \$5.00
Change Amt: \$0.00

crb

Checks and drafts are accepted
subject to collections and full
credit will only be given when the
check or draft has been accepted by
the financial institution on which
it was drawn.